

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

DAVID BARBER

CIVIL ACTION NO. 09-CV-1562

VERSUS

JUDGE TUCKER L. MELANÇON

BRISTOL MYERS SQUIBB CO., ET AL

MAGISTRATE JUDGE HANNA

JUDGMENT

Before the Court is defendant's Motion To Dismiss plaintiff, David L. Barber's, action with prejudice [Rec. Doc. 87]. The Court referred the Motion to United States Magistrate Judge Patrick J. Hanna for report and recommendation. Judge Hanna conducted a hearing on the Motion on November 23, 2011 and issued a Report and Recommendation on November 28, 2011, recommending that the Court dismiss this action without prejudice. [Rec. Doc. 94]. Barber filed an objection to the Report and Recommendation on December 8, 2011. *R. 95.*

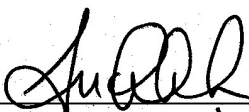
In his objection, Barber states that he should be given a "2nd chance" "possibly with longer times" to complete a joint plan of work with the parties in this case. The record indicates that since this action was filed on September 4, 2009, the Court has given Barber a number of "second chances" to comply with the Court's order at issue. On November 9, 2010, Barber's attorney filed a motion to withdraw as his counsel of record. *R. 77.* At the December 2, 2010 hearing in which the Court granted Barber's attorney's motion to withdraw, Barber requested that the Court allow him until September 2011 to enroll new counsel. *R. 79.* The Court ordered Barber "to file a motion to reopen this proceeding on or before September 1, 2011 and to enroll his new counsel or to state that he will proceed pro

se.” *R. 79, 81.* Rather than comply with the Court’s order, on September 1, 2011, Barber filed a motion for the Court to appoint him counsel and a motion for an additional 90 days to hire an attorney. *R. 82, 83.* On September 2, 2011, the Court denied the motions, reopened this action and extended the deadline for the parties to submit a Joint Proposed Plan Or Work to October 4, 2011. *R. 84.* The Court ordered that, in the event Barber failed to cooperate with defendant’s counsel and to fully and completely comply with the deadline, defendant’s attorney was to file a motion to dismiss plaintiff’s claim with prejudice. *Id.* Barber again failed to comply with the Court’s order and filed a motion for an extension of 120 days which the Court denied on October 26, 2011. *R. 91.*

After an independent review of the record, and considering the objection filed by Barber as well as the District Judge’s personal familiarity with the record of this proceeding, the Court concludes that the Magistrate Judge’s most thorough and well-written Report and Recommendation is correct and adopts the findings of fact and conclusions of law set out therein as its own. Therefore, it is

ORDERED that Defendants’ Joint Motion to Dismiss [Rec. Doc. 87] is **GRANTED** in part, and this action is **DISMISSED WITHOUT PREJUDICE**.

THUS DONE AND SIGNED in Lafayette, Louisiana, this 16th day of December, 2011.



Tucker L. Melançon
UNITED STATES DISTRICT JUDGE